

STAFF REPORT

CLEANUP & ABATEMENT ORDER DIXON BUSINESS PARK DIXON, SOLANO COUNTY

BACKGROUND

This Cleanup and Abatement Order is proposed to be issued for the Dixon Business Park (Site) to the current owner of the Site, Dixon Commercial Properties; and the former owners, Monfort, Inc., ConAgra Foods, Inc., and Greynom, Inc., (hereafter the Discharger). The Site is located at North 1st Street in Dixon, California and occupies approximately 50 acres. The Site has been partially developed by Dixon Commercial Properties. The Site was formerly used for meat processing from the mid 1930's to the late 1980's. Industrial waste from the Site consisted of wash waters, paunch materials and other liquid wastes. The Site processed approximately 125 cattle and 1200 sheep, along with the rendering of scrap materials on a daily basis. Wastewater from the meat processing operations was disposed in seven ponds (aerobic and anaerobic) for treatment, storage, and disposal. The ponds were operated under Waste Discharge Requirements (WDRs) issued by the Regional Board from 1958 until 1993.

SITE OWNERSHIP

The site history of owners and operators, and the relationship of those owners and operators to one another are complex. (See Attachment 1). In general, Mace Meat Company was the original owner of the facility and operated the Site from the 1930's until 1958. From 1958 until 1983, the Site was owned and operated by various companies associated with the Armour Company, which was ultimately acquired by Greynom, Inc. From 1983 to 1987 CAG Subsidiary, Inc. and ConAgra Foods, Inc. owned the Site and continued to operate it as a meat packing and slaughtering house. Monfort, Inc. (f/k/a/ Monfort of Colorado, Inc) acquired the Site during reorganization and merger with ConAgra, Inc. and CAG Subsidiary, Inc. in 1987. During its ownership of the property (from 1987 to 1989), Monfort, Inc. continued meat packing and slaughtering operations at the Site. The Site was purchased from Monfort, Inc. by William H. MacLaughlin on May 1, 1989. Monfort, Inc. and William H. MacLaughlin entered into a sales agreement for the purchase of the Site. Dixon Commercial Properties took title directly from Monfort, Inc. in 1989 under an assignment from William H. MacLaughlin.

The following information summarizes Regional Board staff's understanding of the corporate history of the various site owners based on documentation submitted to the Board by the Dischargers. Mace Meat Company was the original owner of the facility and operated the Site from the 1930's until 1958, when Armour and Company (IL) acquired the Site. In 1960, while still owning and operating the Site, Armour and Company (IL) merged with Armour and Company Delaware and the company name was changed to Armour and Company. Armour and Company continued operating the site until 1982 when Greyhound Corporation merged with Armour and Company. Records provided to Regional Board staff suggest that all assets and liabilities from Armour and Company were transferred to G. Armour Arizona Company by assignment and the Mace Meat Company deed was never transferred to the Greyhound Corporation during this transaction. The G. Armour Arizona Company changed its name to Armour and Company that same year (1982) and all assets and liabilities were transferred to the Armour Food Company.

In 1983, all assets and liabilities of the former G. Armour Arizona Company, then known as the Armour Food Company, were purchased by CAG Subsidiary, Inc. and ConAgra, Inc. The transfer of assets from the Armour Food Company to CAG Subsidiary, Inc. and ConAgra, Inc. included the Site. Armour Food Company changed names in 1983 and became known as Greynom, Inc. Greynom Inc. was dissolved in 1985.

In 1990, the Greyhound Corporation changed its name to Greyhound Dial Corporation. After another name change in 1991, from the Greyhound Dial Corporation to the Dial Corporation, the Dial Corporation merged with Armour and Company in 1992. Eventually in 1996, the Dial Corporation changed its name to the Viad Corporation.

From 1983 to 1989, CAG Subsidiary, Inc. and ConAgra Foods, Inc. (f/k/a ConAgra, Inc.) continued to operate the business of Armour Foods and use the Armour brand name. CAG Subsidiary, Inc. was operated as a subsidiary of ConAgra, Inc. As part of this business, the Site continued to operate as a meat packing and slaughtering house. Monfort, Inc. (f/k/a/ Monfort of Colorado, Inc.) acquired the Site during a reorganization and merger with ConAgra, Inc. and CAG Subsidiary, Inc. in 1987. During its ownership of the property (from 1987 to 1989), Monfort, Inc. continued meat packing and slaughtering operations at the Site.

The Site was purchased from Monfort, Inc. (f/k/a Monfort of Colorado, Inc., a Delaware Corporation) by William H. MacLaughlin on May 1, 1989. Monfort, Inc. and William H. MacLaughlin entered into a sales agreement for the purchase of the Site. However, records provided by Mr. MacLaughlin support that he acted as a nominee whereby the deed for the property was transferred from Monfort, Inc. to Dixon Commercial Properties and that Dixon Commercial Properties from that point became the owner of the Site.

REGULATORY HISTORY OF THE PROPERTY

The regulatory history of this Site suggests that the operation of the ponds was generally in compliance with the WDRs. Beginning in 1986, the Regional Board began requesting site investigations to evaluate if the ponds were in compliance with the new, at that time, Subchapter 15, Chapter 3, Title 23 (CCR) regulations. As part of this request, the Regional Board required the development of a groundwater monitoring program. The Regional Board's case file indicates that several proposals were developed by the Discharger to provide necessary sampling of the waste discharged to the ponds and provide groundwater data to determine if the ponds were in compliance with the Subchapter 15, Chapter 3, Title 23 (CCR) monitoring requirements at that time. Although proposals for groundwater sampling were developed, the Discharger (Monfort, Inc.) did not actually implement them. In 1988, the Discharger (Monfort, Inc.) requested guidance from the Regional Board for closure requirements for the ponds.

In 1989 the Regional Board requested a closure plan for the ponds and sampling and analysis of the sludge in the ponds. Sampling and analysis of the ponds did not detect the presence of VOCs. Sampling that was conducted for nitrate and other inorganic constituents by the Discharger (Monfort, Inc.) suggested that the application of sludge would not cause significant impacts to underlying groundwater. After the Discharger (Monfort, Inc.) provided analytical data for the sludge contained in the ponds, the Regional Board agreed to the land application of the sludge. However, the Regional Board did not concur with the application of sludge on the Site as requested by the Discharger (Monfort, Inc.) because future use of the Site was uncertain and no groundwater data was available indicating whether the Site had impacted water quality.

In 1990, the Discharger (Monfort, Inc.), with Regional Board staff concurrence, removed all sludge from the ponds and spread them in agricultural areas adjacent to the Site. Requests made by the Regional Board to provide groundwater data were finally addressed in 1989 and 1990. Groundwater grab samples collected downgradient of the ponds detected nitrate (as NO_3) ranging from 100 to 200 mg/l, which exceeds the Primary Maximum Contaminant Level (MCL), which is 45 mg/l. The groundwater sampling also detected total dissolved solids (TDS) at 1300 mg/l, which exceeds the agricultural water quality limit. After Regional Board staff reviewed the groundwater analytical data and analytical data from the sludge that came from the ponds, and the Discharger (Monfort, Inc.) removed the sludge from the ponds and it was concluded that the possible source of the nitrates was gone and that the Regional Board staff would “not pursue the high nitrate problem at this time”. Several other environmental problems, which included petroleum hydrocarbon contamination from several on-site underground storage tanks (USTs), were also addressed between 1990 and 1993. WDRs, issued to Armour Food Company/Con Agra Corporation (Order No. 93-052) for the ponds were rescinded in 1993.

Site environmental assessments conducted as part of the redevelopment of the property by the new owner, Dixon Commercial Properties, were conducted as portions of the property were sold between 1996 and 1999. The sale of one portion of the Site in 1999 included an assessment of soil and groundwater. The groundwater investigations detected nickel at 230 $\mu\text{g/l}$, which is above the primary MCL of 100 $\mu\text{g/l}$. Regional Board staff was informed of these findings, and requested additional groundwater sampling for nickel. Regional Board staff also requested groundwater sampling for nitrate and TDS because of the past Site operations. The Regional Board staff concluded, after reviewing the additional groundwater data collected by Dixon Commercial Properties, that the nickel contamination was limited in extent. However, the additional groundwater data indicated the presence of elevated nitrates and TDS. At the request of Regional Board staff, Dixon Commercial Properties installed four on-site monitoring wells, one upgradient and three downgradient of the former ponds. Analytical testing of these monitoring wells performed from 2001 to 2002 indicated that the upgradient concentrations of nitrates (as NO_3) range from 6.2 to 23 mg/L, below the MCL. The downgradient concentrations of nitrates (as NO_3) range from 62 to 220 mg/L, above the MCL.

In 2001 Dixon Commercial Properties began requesting Regional Board staff to provide “comfort letters” for several areas of the Site after quarterly groundwater sampling data reports were submitted to evaluate nitrate and TDS in groundwater. Dixon Commercial Properties requested these letters to finalize the construction loans for several development projects with lenders of the property. Regional Board staff responded with several letters, which summarized the groundwater investigations and findings from groundwater sampling data reports. These letters explained that further investigation of the Site was necessary to determine the source areas and extent of nitrate and TDS and to develop and implement any remedial actions as appropriate.

In 2002, Dixon Commercial Properties requested a prospective purchaser agreement (PPA) for several portions of the Site. The Regional Board staff responded to Dixon Commercial Properties and explained that a PPA for the Site could not be issued because of the outstanding issues regarding groundwater pollution. Regional Board staff also explained to Dixon Commercial Properties that the Regional Board would begin the process of identifying responsible parties who may be required to provide investigation and cleanup of the Site.

Regional Board staff contacted Con Agra Beef Companies (ConAgra Foods, Inc.) in early 2002 explaining that as a parent company of one of the former owners, Armour and Monfort Food Company, ConAgra Foods, Inc. is a responsible party and should oversee cleanup and abatement of discharges at the Site. A follow-up letter was sent to ConAgra Foods, Inc. in the middle of

2002 requesting cleanup and abatement of discharges at the Site and also requesting that these efforts be coordinated with the current owners of the Site.

During 2003, construction activities in one area of the Site, revealed the presence of a previously undocumented disposal pit. The Regional Board requested sampling of material contained in the disposal pit after it was removed and stockpiled in an adjacent lot. Larger objects were removed during excavation of the soil in the pit (concrete, tires, metal objects, burn debris, wood, and miscellaneous metallic objects) and analytical sampling of the remaining disposal pit soil was conducted. After reviewing the analytical data for the disposal pit soil, Regional Board staff concurred that this soil did not pose a threat to groundwater and that Dixon Commercial Properties could spread this soil in an undeveloped portion of the Site. Although the sampling activities revealed that the disposal pit area was not a potential source for groundwater pollution, Dixon Commercial Properties did incur substantial costs for the removal, interim storage and disposal costs for the disposal pit soils. Dixon Commercial Properties began contacting ConAgra Foods, Inc. and requested reimbursement for the removal, disposal and handling of this material. It is the Regional Board staff's understanding that this matter remains unresolved between the parties.

In March of 2003, the Regional Board staff sent an information request and Draft Cleanup and Abatement Order (Draft Order) to ConAgra Foods, Inc. and MacLaughlin and Company (later this was changed to Dixon Commercial Properties) naming these companies as parties to the cleanup of soil and groundwater pollution of the Site. Between March 2003 and the end of 2004, Regional Board staff continued to assist Dixon Commercial Properties where possible to address concerns which arose regarding the groundwater pollution and development of the property. As noted above, Regional Board staff concurred with the on-site spreading of disposal pit soil that was encountered during the excavation in one area of the Site. This saved Dixon Commercial Properties significantly on disposal costs and allowed development of this area of the Site to continue. The resolution of this issue also eliminated one of the required actions stated in the 2003 Draft Order, which requested that the Dischargers conduct sampling, analyses and disposal of the soil in an appropriate manner.

A meeting between Regional Board staff and Dixon Commercial Properties was held in August 2004 to address comments Dixon Commercial Properties had submitted on the 2003 Draft Order and to address the need for adding additional parties to the Order. As a result of this meeting, Dixon Commercial Properties provided additional information on potentially responsible parties to be included in the Order. Also, Regional Board staff was informed by Dixon Commercial Properties that an additional investigation was conducted in July 2004 to evaluate the presence of nitrate and TDS in groundwater. Additional soil investigations were also performed during the investigation. Regional Board staff received a copy of the Report with the investigation data in September 2004. Also, as a result of the August 2004 meeting, Dixon Commercial Properties provided information to Regional Board staff, which clarified which parties should be named in the Order. A revised Draft Order was issued in March 2005. This was followed by a Tentative Order in July 2005, which addressed comments received on the March 2005 Tentative Order.

The groundwater and soil data provided in the 2004 investigation, which was performed jointly by Monfort, Inc., ConAgra, Foods Inc., and Dixon Commercial Properties included the collection of groundwater samples. Analyses of these samples indicated the presence of nitrates (as NO_3) ranging in concentrations from 99 mg/L to 251 mg/L, and TDS ranging in concentrations from 890 mg/L to 11,000 mg/L in groundwater. Based on the water level data from the monitoring wells installed by Dixon Commercial Properties in 2001, it appears these groundwater samples were collected primarily downgradient of the facility operations. One sample was collected cross

gradient of the former ponds. A complete Site Assessment, a required action in the Order, would confirm whether or not ConAgra Food's and Monfort's assertion is valid that upgradient sources of nitrate have created the groundwater pollution at the Site and not past site operations.

SUMMARY OF COMMENTS AND RESPONSES TO DRAFT ORDER AND TENTATIVE ORDER

Monfort, Inc. /Con Agra Foods, Inc., Viad Corporation, and Dixon Commercial Properties have provided comments on both the Draft Order of March 2005 and a Tentative Order issued in July 2005, which included responses to comments by the parties named in the Order. The following is a summary of comments and responses to the March 2005 Draft Order and the July 2005 Tentative Order issued to the Dischargers.

Viad Corporation

Based in part on additional information provided to Regional Board staff by Viad Corporation, in response to the July 2005 Tentative Order, Regional Board staff determined that Viad Corporation should not be named in this Order. Furthermore, in making an additional review of the relevant technical documents, Regional board staff found that Viad Corporation should not be named as a responsible party because there was inadequate evidence concerning what Viad Corporation knew or should have known concerning the discharge of waste and their legal ability to control it.

Monfort, Inc./ConAgra Foods, Inc.

Monfort, Inc./ConAgra Foods, Inc. believe they should not be named as a responsible party in this Order because (see letters by McGrath North Mullin & Kratz, PC LLO, representing Monfort, Inc. and Con Agra Foods, Inc., dated 28 April 2005 and 14 September 2005):

- ConAgra operation and/or ownership of the Dixon Property was for a relatively brief period, from December 1983 through October 1989.
- Neither ConAgra nor Monfort assumed any liability of Greyhound, or its affiliates, for their ownership and operation of the Dixon Property prior to December 17, 1983.
- Neither ConAgra nor Monfort assumed liability of McLaughlin or DCP for their ownership and operation of the Dixon Property from October 1989 through the present.
- ConAgra and Monfort, with agency approval, have adequately remediated the site
- ConAgra and Monfort have been released by McLaughlin and Dixon Properties for all environmental liability relating to the Dixon Property, in exchange for over \$1.2 million.

Regional Board staff concurrence letters referenced by the Discharger (Monfort, Inc. and ConAgra, Foods, Inc.) pertained only to the cleanup activities for the waste ponds themselves, not groundwater. Other Regional Board and Solano County correspondence referenced by the Discharger [Monfort, Inc. and ConAgra Foods, Inc. (from the early 1990s)] addressed the cleanup activities for the Underground Storage Tanks (USTs), which were associated with the Site and are not part of this Order.

Groundwater analytical data provided from 2001 through 2004, provided by Dixon Commercial Properties and Monfort, Inc./ConAgra Foods, Inc. and discussed in finding #16 and finding #17 of the Tentative Order, indicate that nitrate contamination is greater downgradient of the Site than upgradient of the Site. Information, discussed in findings #12, 14, 15, 16 and #18 of the Tentative Order, indicate that former facility operations, potentially including the waste ponds and other portions of the Site, have contributed to the nitrate pollution detected in groundwater at the Site.

Dixon Commercial Properties

Dixon Commercial Properties believes that they should be referenced in the Order “as a secondarily responsible party and should be required to assume cleanup responsibilities when and if the past owners and operators directly responsible for the contamination fail to conduct a cleanup.

In response, Regional Board staff state that the Regional Board is not mandated to name primary and secondary responsible parties. To the contrary, the Regional Board has the discretion to do so. Regional Board staff believes Dixon Commercial Properties should not be secondarily named because they currently own and control the Site, and past owners and operators have failed to complete investigations or cleanup of the Site.

PROPOSED CLEANUP AND ABATEMENT ORDER

Regional Board staff believe that the nitrate and TDS pollutants detected in groundwater at the Dixon Business Park are creating a condition of pollution and nuisance and that the beneficial uses of groundwater have been impacted by past site operations and justify these actions. This is based on the following:

1. The detection of nitrate and TDS concentration data collected from on-site monitoring wells and also data collected during several recent and historic groundwater sampling events which indicate that water quality objectives for groundwater at the Site have been exceeded.
2. Data collected as part of recent investigations of the Site indicate that nitrate concentrations are less than the MCL [45 mg/l for nitrate (as NO₃)] collected in one upgradient monitoring well. Data from several downgradient wells and groundwater data from several other sampling events on the Site detected nitrate (as NO₃) at concentrations ranging from 62 mg/L to 251 mg/L, which is above the MCL.
3. Board staff concluded in 1990 that the removal of sludge from the ponds, which occurred as part of the closure activities for the ponds, would address the nitrate pollution that was associated with the ponds. Groundwater samples collected in 2001-2002 from the monitoring wells and the distribution of nitrate concentrations detected in other areas on the site from historic and recent sampling events indicate that the nitrate pollution occurs across a majority of the site and is not limited to areas immediately downgradient of the ponds.

ACTIONS REQUIRED BY THIS ORDER

The proposed Order will require the Discharger to investigate the discharges of waste, cleanup the waste, and abate the effects of the waste caused by past activities at the site. Specifically, this proposed Order requires that the Discharger conduct a water supply well survey to help determine if any drinking water wells have been affected by the polluted groundwater, conduct a site assessment to determine the lateral and vertical extent of the polluted groundwater, and provide a Feasibility Study and Cleanup Plan to address the groundwater pollution associated with the Site.